The whole question, therefore, there being no evidence of dangerous driving, is, has the appellant committed any other offence? In my opinion he has not; it is not an offence for fast moving traffic to proceed along the slow traffic lane, nor is it an offence to pass a vehicle on the near side. It might be dangerous under certain circumstances to pass a vehicle on the near side, but in this case there was no evidence that it was.

I would accordingly allow the appeal and set aside the conviction; the fine paid will be refunded to the appellant, and the order for the endorsement of his licence set aside.

Appeal allowed. Conviction quashed.

[APPELLATE CIVIL JURISDICTION]

HORNE, J.

May 10, 1940.

WONG WENG HONG vs. TSOI LAU YING.

[PAHANG CIVIL APPEAL No. 5 of 1940]

Trustee Enactment (Cap. 61), sections 25 and 27 —Power of Attorney—Delegation of Powers by administratrix.

The respondent, in Hong Kong, granted a power of attorney to Wan Sow, by which he was empowered

> "to exercise all privileges, powers and rights vested in me as administratrix of the estate of Loo Chan San (letters of administration therein having been granted to me by the Honourable Judge in Kuantan Administration Petition No. 1 of 1937) and to carry out all duties thereby imposed on me".

There were also ancillary powers.

Acting under this power of attorney, Wan Sow brought this suit in the name of the respondent to recover the value of rubber coupons alleged to belong to her in her capacity of administratrix. The Magistrate rejected the contention that the power of attorney was invalid and held that Wan Sow "is the agent of Tsoi Lau Ying and is entitled to institute the suit and appear in Court. Section 25 of the Trustee Enactment gives a trustee (which includes an administratrix) power to employ agents. Section 27 of the Enactment need only be invoked when the trustee wishes to delegate the discretion vested in him".

Held, that the intention of the respondent was to delegate her duties, powers and rights as administratrix to Wan Sow: therefore the power should have been registered in manner prescribed by section 27 of the Trustee Enactment. Although part of the power might authorise the collection of the rubber coupons, an executive act, yet the authority for the exercise of this power is the instrument itself, and that instrument is legally ineffective without registration of the statutory declaration required under section 27 and cannot be relied upon.

Cases referred to:—

(1) *In the Goods of Hale* 3 P. & D. 207, 31 L. T. 799.

(2) *Green v. Whitehead* (1930) 1 Ch. 38.

CIVIL APPEAL.

E. A. S. Wagner for appellant.
Edgar Joseph for respondent.

Horne, J.—Wan Sow alleging he was the agent under a power of attorney for Tsoi Lau Ying, administratrix of the estate of Loo Chan San, sued the appellant for delivery of a share of rubber coupons issued in respect of land in which the estate of Loo Chan San has an undivided 34/200 shares; the remaining shares are held or represented by the appellant. The appellant objected to giving up the share of the coupons due to the administratrix on the ground that Wan Sow was not a duly authorized agent of the administratrix and had, therefore, no authority to claim the coupons or the proceeds of the rubber.

It appears that the appellant was in fact managing the land. He received coupons for the whole; employed a contractor to tap and smoke the rubber, and deliver it to Kuantan. The Magistrate rejected his contention that the power of attorney was invalid and held that by this power of attorney Wan Sow "is the agent of Tsoi Lau Ying and is entitled to institute the suit and appear in Court. Section 25 of the Trustee Enactment gives a trustee (which includes an administratrix) power to employ agents. Section 27 of the Enactment need only be invoked when the trustee wishes to delegate the discretion vested in him". He found that the value of the share of the administratrix to be $239.02, and gave judgment for the respondent.

The appellant's ground of appeal is that the Magistrate is wrong in law in holding Wan Sow to be the agent of the administratrix-respondent and should have dismissed the suit. *Mr. Wagner's* argument is that the office of administratrix is not assignable and that this power of attorney being a complete assignment of the office is invalid. Alternatively, if the office may be delegated, then the power of attorney, not having been registered in compliance with section 27, there is no valid delegation. Further, the Magistrate is wrong in holding that this power of attorney appoints an agent by virtue of section 25 of the Trustee Enactment. He submits that the admini-

stratrix can only appoint an agent under that section when she herself is within the jurisdiction.

Mr. Joseph, for the respondent, contended that the power of attorney is proof of an appointment as agent for the purpose of collecting the coupons or proceeds, that is under section 25 (1), and that section 27 is limited to trustees and does not extend to personal representatives. Alternatively, that if the power of attorney gives power greater than is permissible then the permissible parts may be severed from the rest and acted upon.

I do not accept the arguments of either party in their entirety. In my opinion the wide definition of "trust and trustee" in section 3 of the Trustee Enactment makes it possible to apply section 27 to a personal representative. In a loose sense an administrator is a trustee for the creditors and beneficiaries, since he holds the estate for their benefit and not for his own. He may be made liable for a breach of trust.

In this case clearly the administratrix is holding land belonging to the estate and on that ground she is a trustee. At the most, whether she is within or without the jurisdiction, she can only appoint an agent under section 25 (i) of the Trustee Enactment "to transact any business or do any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate". An administrator always had the power: *In the Goods of Hale*[1]. But as was pointed out by Eve, J., in *Green v. Whitehead*[2], she cannot, under section 25 (i) in reference to property within the jurisdiction, appoint an agent to exercise such wide powers as she would be able to under section 25 (ii) in respect of property outside the jurisdiction.

Now a third party, as is the appellant, being called upon to pay an agent has to exercise care, for he is not discharged from his liability to the principal unless such payment is made in the ordinary course of business, and in accordance with the agent's authority express or implied. (*Halsbury,* 2nd edition, volume I, paragraph 468). The authority by which the agent demands payment in this case is the power of attorney, and it is clearly much more than an authorization to collect these particular profits which accrue to the intestate's estate and are the subject of the suit.

The question is whether in fact she is employing an agent to transact any business or do any act required to be transacted or done in the administration of the estate as section 25 (i) permits; or whether, intending to remain abroad for more than 14 days, she delegates the execution or exercise during her absence of all or any of the trusts, powers and discretions vested in her as trustee.

The power of attorney, which was executed in Hong Kong, recites that Wan Sow is "to be my true and lawful attorney for me and in my name or otherwise to do all or any of the following things in relation to the said estate". Then follows clause 1 in these terms: "to exercise all privileges, powers and rights vested in me as administratrix of the estate of Loo Chan San (letters of administration therein having been granted to me by the Honourable Judge in Kuantan Administration Petition No. 1 of 1937) and to carry out all duties thereby imposed on me". Clause 3 gives power "to manage or superintend the managements of all lands belonging to the estate". Clause 4 the power "to transfer, sell or concur in selling the said estate or any part thereof and to receive the purchase money thereof". Clauses 5 and 6 are ancillary to the others. There appears to be no way of restricting the effect of clause 1 by recourse to the recital. The intention of the donor is to delegate her duties, her powers and her rights as administratrix to the donee: and therefore the power of attorney should have been registered in the manner prescribed by section 27, especially by sub-sections (iv) and (v). It is argued that even if the power of attorney does not comply with section 27 it is nevertheless sufficient to show that Wan Sow is authorised to receive the coupons or the proceeds thereof. True the greater powers given or intended to be given by the power of attorney may include this lesser power, but to exercise even the lesser power the authority for such exercise is the instrument and nothing else, and, as that instrument is legally ineffective, by reason of the failure of the donee to register with it the statutory declarations required from him and the donor under sub-sections (iv) and (v) of section 27, it cannot be relied upon. It is not an ambiguous instrument: it is a delegation of all rights, powers and duties, and it requires the formalities before it can be recognised and acted upon. A person dealing with Wan Sow at present does not know whether the administratrix may not have returned to the Federated Malay States and as a consequence the power of attorney is automatically revoked. Further, the administratrix has a grant limited for the use and benefit of a person entitled who is resident in China and may come to this country and apply for and receive a grant.

I therefore think the Magistrate was wrong in holding that section 27 had no application to this power of attorney and in holding that authority to claim and sue could be derived from it.

The appeal is allowed with costs. The decree in the Magistrate's Court is set aside and it is ordered that the suit be dismissed with costs.

Appeal allowed. Decree of Magistrate set aside and suit dismissed.

[APPELLATE CRIMINAL JURISDICTION]

MURRAY-AYNSLEY, J.

June 10, 1940.

KOK HO LENG vs. PUBLIC PROSECUTOR.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 11 of 1940]

Evidence Enactment (Cap. 10), sections 6 and 7 —Telephone message—Admissibility of.

A telephone message received on the premises during a raid under the Betting Enactment is under certain circumstances admissible in evidence under sections 6 and 7 of the Evidence Enactment.

CRIMINAL APPEAL.

Balfour Ross and Yeoh Cheang Lee for appellant.

T. V. A. *Brodie*, Deputy Public Prosecutor, for respondent.

Murray-Aynsley, J.—This is an appeal against a conviction under section 4 (c) of the Betting Enactment. There was a raid on premises occupied by the appellant. From the conduct of the persons on the premises and of the appellant himself and what was found on the premises I think that the prosecution had clearly established this case even without the aid of the presumptions under section 10 of the Enactment. The statement of the appellant did nothing to dispel any presumption that the evidence of the prosecution might have raised.

But there was one point of some interest, viz., whether a telephone message to the premises during the raid was admissible in evidence. In an unreported case Mr. Justice Howes held that such a message was not admissible. I personally am inclined to think that it is admissible under two sections: 6 which is the section which deals with what are known as "*res gestae*" in England. I think that a telephone message has some analogy to the shouting of the by-standers; further in view of the subsequent cutting of the wire I think that the telephone message may be relevant under section 7.

In any case I don't think that this is a matter which would have any great weight in determining the case, and even if this was wrongly admitted I do not consider that there was any miscarriage of justice.

The penalty is a fairly heavy one, but in cases of this kind penalties must be severe. It is not possible to form any idea of the extent of the business carried on, but the reason for that is that the appellant did his best to get rid of evidence when the raid took place.

Appeal dismissed.